

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,
Plaintiff
v.
Brian Keith Wright,
Defendant

Case No.: 2:17-cr-00142-JAD-VCF

Order Denying Motion

[ECF Nos. 223, 225]

Brian Wright was found guilty of assault on a federal officer in 2019, and the Ninth Circuit affirmed his conviction.¹ Through a largely incomprehensible and narrative motion, Wright sought habeas relief under 28 U.S.C. § 2255 in February of this year.² Because his motion contained no legal argument for modification or vacatur of his sentence and the record conclusively established that he is not entitled to the relief he seeks, I denied his motion without awaiting a response from the government.³ Six months later, Wright filed a “Motion Requesting the Court to Grant 2255 due to the Government’s Consent,” arguing that “the government consented to the facts within [his] 2255 due to its 8 months of complete silence.”⁴ The government opposes the request.⁵

Wright is mistaken about the history of, and procedural rules applicable to, his § 2255 motion. First, the government did not ignore his motion for eight months—this court denied it

¹ ECF No. 221.

2 ECF No. 223.

³ ECF No. 228.

23 | ⁴ ECF No. 230.

⁵ ECF No. 231.

1 six months ago, mooted any need for response. More importantly, the government never had an
2 obligation to respond to the motion in the first place. Rule 4 of the Rules Governing Section
3 2254 Cases and Section 2255 Proceedings requires the court to dismiss or deny a motion “[i]f it
4 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to
5 relief in the district court.”⁶ If the court does not so find, only then must it order the government
6 “to file an answer, motion, or other response within a fixed time”⁷ Because it plainly
7 appeared from Wright’s motion that he was not entitled to the relief he was requesting, this court
8 denied the motion and did not direct the government to respond.⁸ The government therefore had
9 no obligation to respond to Wright’s § 2255 motion, so its failure to do so could not be construed
10 as consent.

11 IT IS THEREFORE ORDERED that Brian Wright’s motion [ECF No. 230] is DENIED.

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13 
14 U.S. District Judge Jennifer A. Dorsey
15 October 11, 2022

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22 ⁶ Habeas Rule 4.

23 ⁷ *Id.*

⁸ ECF No.